



## Rhetoric, Aboriginal Australians and the Northern Territory Intervention: A Socio-legal Investigation into Pre-legislative Argumentation

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### Abstract

Presented within this article is a systematic discourse analysis of the arguments used by the then Australian Prime Minister and also the Minister for Indigenous Affairs in explaining and justifying the extensive and contentious intervention by the federal government into remote Northern Territory Aboriginal communities. The methods used within this article extend the socio-legal toolbox, providing a contextually appropriate, interdisciplinary methodology that analyses the speech act's rhetorical properties. Although many academics use sound-bites of pre-legislative speech in order to support their claims, this analysis is concerned with investigating the contents of the speech acts in order to understand how the Prime Minister's and Minister for Indigenous Affairs' argumentations sought to achieve consensus to facilitate the enactment of legislation. Those seeking to understand legislative endeavours, policy makers and speech actors will find that paying structured attention to the rhetorical properties of speech acts yields opportunities to strengthen their insight. The analysis here indicates three features in the argumentation: the duality in the Prime Minister's and Minister's use of the Northern Territory Government's *Little Children are Sacred* report; the failure to sufficiently detail the linkages between the Intervention and the measures combatting child sexual abuse; and the omission of recognition of Aboriginal agency and consultation.

### Keywords

Discourse analysis; socio-legal studies; Northern Territory intervention; aboriginal Australians; rhetoric; child sexual abuse.

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## Introduction

How did an Australian federal administration justify legislation facilitating an unprecedented intervention into remote Aboriginal<sup>1</sup> communities after years of inaction? In May 2006, the Australian Broadcasting Corporation's popular *Lateline* national television program aired an interview with Nanette Rogers, the Crown Prosecutor for the Northern Territory (Jones 2006). This program catapulted the long-standing issues of Aboriginal community degradation and reporting of child sexual abuse onto an international stage (see Mercer 2006). The federal government, through the Council of Australian Governments (COAG), convened the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities. Recognising that these issues existed for Indigenous communities throughout Australia in urban, rural and remote areas, COAG expressed concern that:

... some Indigenous communities suffer from high levels of family violence and child abuse. Leaders agreed that this is unacceptable. Its magnitude demands an immediate national targeted response focused on improving the safety of Indigenous Australians. Despite all jurisdictions having taken steps over recent years to address this problem, improved resourcing and a concerted, long-term joint effort are essential to achieve significant change. (COAG 2006: 12)

In response, the federal government offered to provide AU\$130 million in order to combat issues in remote communities; AU\$40 million of which was earmarked for increased police resources. Faced with Rogers' allegations and increasing pressure from the federal government's Minister for Families and Community Services and Indigenous Affairs, Mal Brough, the Northern Territory Chief Minister Clare Martin commissioned a report into child sexual abuse in the Northern Territory.

The report, *Little Children are Sacred* (Wild and Anderson 2007; hereafter 'the Report') was delivered to Northern Territory Chief Minister Martin on 30 April 2007 and released publicly on 15 June 2007. From the time of his appointment to the federal cabinet in January 2006, Minister Brough had indicated a willingness to respond to the increasing levels of concern in Indigenous communities. On the same day as the Report was released, Brough signalled:

... [c]ommit[tment] to working with the Northern Territory Government to do whatever is necessary to bring an end to this insidious behaviour in Indigenous communities. (Brough: Speech Act A)

The result was the Northern Territory National Emergency Response. Over 500 pages of hastily designed and inherently complex legislation to tackle the systemic problems surrounding child abuse in the Northern Territory's Indigenous communities were introduced into Parliament on 7 August 2007 in three main bills. These were passed expeditiously in the Senate, as noted by both Pritchard (2007) and Edmunds (2010), in order to receive Royal Assent by 17 August 2007. The legislated acts, the contents of which are detailed extensively elsewhere (see Billings 2009; Cripps 2007), contained a range of provisions: on access to and consumption of alcohol; on pornography on publicly-funded computers; on possession and distribution of prohibited material such as pornography and films classified as X 18+ or publication, film or computer game classified as RC; on acquisition of rights, titles and land interests; on access to Aboriginal land; on law enforcement, bail and sentencing; on licensing of community stores; and on implementation of an income management regime. Controversially, the legislation contained provisions suspending the operation of the Commonwealth's *Racial Discrimination Act 1975*, preventing a challenge to the legislation on the basis that it was targeting a racially distinct group. Forthwith in this article, 'the Intervention' will refer to the package of legislative measures enacted following Minister Brough's announced intention of the federal government to intercede.<sup>2</sup>

The provisions were extensive and highly intrusive, significantly impacting the lives of those subject to them. They applied to entire Aboriginal communities: merely by living within a designated community, individuals and families were subject to the legislation. Understandably, many Australians, both Indigenous and non-Indigenous, have been overwhelmingly critical of the need to intervene, the method or tools of the used, and the extent of the action taken. Examples include Howe's assessment that the administration was 'reactionary... [and] with such an appalling track record on Indigenous affairs' (Howe 2009: 42). Willis similarly suggested the foray was an 'unnecessarily violent and biased reaction to a genuine problem' (Willis 2012: 90); while the then Australian Prime Minister John Howard was called a 'racist bastard' by the New Zealand Maori activist and former parliamentarian Hone Harawira (cited in Small, Murdoch and Coorey 2007). Stringer categorised the federal government's decision to act as 'neocolonial and its actual agenda as one of assimilatory neoliberalism' (2007: 1). Others have suggested the response was 'disproportionate and extreme' (Tedmanson and Wadiwel 2010: 11) and a case of 'sheer political opportunism to advance an already in-motion agenda [to move Aboriginal people off their lands], and to score points in an election year' (Martiniello 2007: 124).

### Scope of this article

This article presents the results of a systematic discourse analysis of 16 public speech acts<sup>3</sup> by the then Prime Minister, John Howard, and then Minister for Families and Community Services and Indigenous Affairs, Mal Brough, (collectively, 'the Ministers') which were used to justify the legislative provisions of the Intervention.

Socio-legal analysis takes many forms but has to date shied away from engaging with significant structured analysis of communication and argument in the pre-legislative process. Like much legal analysis, socio-legal analysis has avoided paying substantial attention to the argumentation of politicians, leaving this to be analysed within the political sphere. Bucking this trend, this article highlights how an appropriate discursive methodology can be used to expand our knowledge of the use and manipulation of language within the pre-legislative process. It facilitates an understanding of the argumentation supporting legislation intervening into Aboriginal communities. It paves the way for further research into strategies for argumentation for facilitating legislative enactment and, in this instance, it also provides an empirical understanding of how key features such as the emergency nature of the Intervention were deployed to aid the Ministers' argument. The findings provide a platform for further research into the effectiveness of the legislation in ameliorating the situation and its impact on Aboriginal communities. Conducting the research within an inductive paradigm leads to empirical findings that can be used to support alternative truths; although outside the scope of this article, these relate in particular to the basis and motivations for Ministerial intervention and later shifts in Ministerial discourse on the Intervention, including inclusivity surrounding the *Stronger Futures in the Northern Territory Act 2012* (Cth). Such analysis can be useful for policy makers, politicians and orators using rhetorical techniques, and those seeking to critique them.

The article outlines the need for a socio-legal analysis, the socio-legal framework and methodology used. The analysis of the speech acts identified three key features within the Ministers' argumentation. These relate to the duality in the Ministers' use of the *Little Children are Sacred* report; the explanation of linkages between the legislative provisions of the Intervention and combating child sexual abuse; and the Ministers absence of any recognition of Aboriginal agency and the need for consultation. These features in the argumentation are discussed, before concluding comments are made.

### A socio-legal analysis of argumentation justifying the Intervention

There have been attempts by socio-legal scholars to engage with the pre-legislative process. For example, McManus (1978: 201) looked to the pre-legislative space for an 'understanding of the variety of ways in which power can manifest itself' in the context of the emergence and non-

emergence of legislation. McManus (1978: 201) has suggested that the process of legislating is a fascinating object of study 'because it is the most public, formal, accountable and potent method of mobilizing state power'. Other scholarship offered by Hörmann (1988) has sought to provide research for use by actors in a political process. He suggested that empirical socio-legal studies could go beyond their principal function of legitimising law reform and political action and become a 'material force' for the political process (Hörmann 1988: 211). Despite these forays, socio-legal scholarship has not expended much effort in investigating pre-legislative discourse.

While there has been a multiplicity of research on the Intervention, very little has examined the discourse employed; notable exceptions include Proudfoot and Habibis's (2015) analysis of populist media accounts, and Macoun's (2011) understanding of the use of constructions of Aboriginality deployed in support of the Intervention. Although the Intervention was analysed by Grube (2010) as part of a study on rhetoric in policy cycles, there has not been an in-depth analysis of ministerial discourse garnering support for the legislation during the pre-legislative process. Other authors have referenced second reading speeches and pre-legislative discourse as a means of supporting academic arguments about the motives, legitimacy and responsivity of government action towards Aboriginal people: see, for example, Anthony (2009), Bielefeld (2014) and Howard-Wagner (2010b). However, such analysis did not systematically analyse the words uttered in a methodical manner within an inductive paradigm. In comparison, this analysis seeks to understand the Ministers' argumentation in the speech acts that resulted in successful legislative enactment in a highly controversial policy area. The knowledge generated for this article results from asking questions such as 'How did the Howard government justify their legislative response to the situation in the Northern Territory?' and 'What rhetorical techniques were used in the communication of arguments to the public and in legislative chambers?' While the legislation was successfully passed by both houses of the federal parliament, my analysis indicates a number of omissions in both the argumentation and justificatory reasoning made to the Australian public and legislators.

The actors in the speech acts (see Table 1) intended the acts' dissemination either in Parliament or through media reporting as part of the public debate. The speeches were located using a search of Australian government websites. The speech acts were delivered as part of the pre-legislative process between 15 June 2007 and 7 August 2007, when the legislation was passed. The analysis of the 16 speech acts was conducted within the rhetorical political analytical (RPA) paradigm. The analysis was inductive and was not conducted in order to *argue* that the Intervention was or was not necessary or legitimate; rather it sought to *understand* the construction of arguments used by the Ministers to enact legislation. The analysis does not start with the assumption that the Intervention was good or bad, necessary or unnecessary, legitimate or illegitimate. Although the findings of such analysis can be used to support deductive research that may argue about the legitimacy of the Intervention, this is not the primary purpose.

Finlayson (2004) argued that interpretive – that is, rhetorical and linguistic – approaches have not been widely adopted within political science. Similarly, they have not been adopted in legal scholarship; black-letter legal scholars could attempt to write off an analysis of such speech acts as simply a political analysis.<sup>4</sup> However, the pre-legislative process is a perfect example of where appropriate interdisciplinary scholarship attending to differing needs is required; in this case, of politics and law. The outcome of the speech acts, as intended, was a raft of legislative provisions.

**Table 1: Summary of speech acts identified by actor(s)**

<i>Id Code</i>	<i>Speech reference</i>
A	Media Release (15 June 2007) by The Hon Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs in the Australian federal parliament, 'NT Child Abuse Inquiry'.
B	Media Release (21 June 2007) by The Hon Mal Brough MP, 'National Emergency Response to Protect Aboriginal Children in the NT'.
C	Australia, Commonwealth, House of Representatives (21 June 2007) at 72-76 (The Hon Mal Brough MP).
D	Interview (27 June 2007) of The Hon Mal Brough MP by Kerry O'Brien on <i>The 7:30 Report</i> , ABC, Sydney, Archives.
E	Interview (7 August 2007) of The Hon Mal Brough MP by Alexandra Kirk titled 'Nothing New in NT Intervention Law' on <i>AM</i> , ABC, Sydney, Archives.
F	The Hon John Howard MP, Prime Minister of Australia, Weekly Radio Message (25 June 2007). Available at <a href="http://pmtranscripts.dpmc.gov.au/browse.php?did=15333">http://pmtranscripts.dpmc.gov.au/browse.php?did=15333</a> (accessed 10 January 2015).
G	Austl., Commonwealth, House of Representatives (7 August 2007) at 18 (The Hon Mal Brough MP).
H	Transcript of the Joint Press Conference (21 June 2007) by The Hon John Howard MP and The Hon Mal Brough MP on the Indigenous Emergency, Canberra. Available at <a href="http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F8XFN6%22">http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F8XFN6%22</a> (accessed 10 January 2015).
I	Interview (21 June 2007) of The Hon John Howard MP by Tony Jones on <i>Lateline</i> , ABC, Sydney, Archives.
J	Interview (22 June 2007) of The Hon John Howard MP by David Koch and Melissa Doyle on <i>Sunrise</i> , 7 Network. Available at <a href="http://pmtranscripts.dpmc.gov.au/browse.php?did=15653">http://pmtranscripts.dpmc.gov.au/browse.php?did=15653</a> (accessed 10 January 2015).
K	The Hon John Howard MP (2007) 'To Stabilise and Protect: Little Children are Sacred'. <i>The Sydney Papers</i> 19(3): 68-76.
L	Interview (26 June 2007) of The Hon John Howard MP by Matt Conlan on <i>Territory Today</i> , Radio 8HA. Available at <a href="http://pmtranscripts.dpmc.gov.au/browse.php?did=15673">http://pmtranscripts.dpmc.gov.au/browse.php?did=15673</a> (accessed 10 January 2015).
M	The Hon John Howard MP (26 June 2007) doorstep interview, Fraser Shores, Hervey Bay, Queensland. Available at <a href="http://pmtranscripts.dpmc.gov.au/browse.php?did=15672">http://pmtranscripts.dpmc.gov.au/browse.php?did=15672</a> (accessed 10 January 2015).
N	Joint Press Conference (21 July 2007) by The Hon John Howard MP and The Hon Mal Brough MP at Phillip Street, Sydney Available at <a href="http://pmtranscripts.dpmc.gov.au/browse.php?did=15599">http://pmtranscripts.dpmc.gov.au/browse.php?did=15599</a> (accessed 10 January 2015).
O	The Hon John Howard MP (29 June 2007) doorstep interview in Narangba, Queensland by unknown journalist. Available at <a href="http://pmtranscripts.dpmc.gov.au/browse.php?did=15687">http://pmtranscripts.dpmc.gov.au/browse.php?did=15687</a> (accessed 10 January 2015).
P	The Hon John Howard MP address (26 June 2007) to a Community Morning Tea, Hervey Bay, Queensland. Available at <a href="http://pmtranscripts.dpmc.gov.au/browse.php?did=15340">http://pmtranscripts.dpmc.gov.au/browse.php?did=15340</a> (accessed 10 January 2015).

Political actors are concerned with assembling an 'audience with a common horizon of concern' (Finlayson and Martin 2008: 529). Political speech, in particular that preceding a vote on legislative provisions, is concerned with the creation of consensus, often through the use of 'intrinsically persuasive' images (Finlayson and Martin 2008: 450). Krebs and Jackson (2007) have argued that social scientists should not begin by specifying the interests of actors in order to prevent their analysis being driven by this agenda. However, for the purposes of this article, it is accepted that the Ministers sought support for their proposed legislative provisions. Wilson (2001: 410) suggested 'one of the core goals of political discourse analysis is to seek out the ways in which language choice is manipulated for specific political effect'.



This article addresses the lack of scholarship surrounding the process of consensus-making, including the process of communication and argumentation in pre-legislative speech acts to facilitate the passage of contentious legislation, in this case the *Northern Territory National Emergency Response Act 2007* (Cth) and associated acts comprising the Intervention. The selection of the paradigm allows for the bridging of social sciences and law. This RPA paradigm allows for the pre-legislative speech to be understood as seeking a consensus in order to pass a vote to enact the legislation. The paradigm values the use of rhetoric in pre-legislative consensus creation. The insights gained from this mode of analysis can be used for further purposes of critique and improvement, and increasing legitimacy and transparency in the exertion of power through the mechanism of law. This method of analysis is particularly useful for those studying the enactment of law and mobilisation of support for action concerning marginalised groups or communities.

Methodologically, the speech acts were read and analysed for the reasons given in support of the Intervention. First, a close textual reading of the speech acts occurred and arguments made by the Ministers were noted. This was coupled with research into the external circumstances and broader socio-political context of the speech acts. Second, the language choice, argumentation and reasoning were identified and then understood in relation to the positioning and use of rhetorical tropes: for example, hyperboles, irony, litotes,<sup>5</sup> metaphors, metonymies,<sup>6</sup> oxymorons and synecdoches.<sup>7</sup> Trope usage in argument structure supporting government action was identified and analysed. Numerous and repeated close textual readings helped to identify the meaning within the trope. Potential conflicting meanings were noted, and the tropes were then clustered and themes identified.

Chandler (2007: 124) suggests rhetorical 'tropes may be essential to understanding if we interpret this as a process of rendering the unfamiliar more familiar'. The Ministers sought to ensure the general public as well as the lawmakers understood the need for action and thus supported the Intervention. Chandler (2007) noted that the identification of figurative tropes in texts and practices could help identify the thematic framework, which sometimes involves the use of an overarching metaphor or dominant trope. It is argued here that the overarching metaphor and dominant trope was a 'synthetic necessary truth' (Roffee 2014). A synthetic necessary truth occurs when actors seek to create a reality that portrays life or a situation or scenario in a way that is at odds with empirical reality, for a specific reason. For example, there is an implicit need or 'necessity' to frame the situation, in order to legitimise the federal government's action and create a political consensus to tackle the problem in the way advocated. In this trope, synthetic indicates the falsity of the situation or 'truth' that is being created and used by the political actors. As argued elsewhere, '[t]his creation may merely be the framing of an issue or situation in such a way as to make the situation appear at odds to empirical reality' (Roffee 2014: 118). The analysis indicates that this trope focused on the *newly emerged need for action* to combat child sexual abuse and the complicity of the Aboriginal communities in its commission. However, there was already support for action to tackle child sexual abuse in Aboriginal communities (see Aboriginal Child Sexual Assault Taskforce 2006; Gordon, Hallahan and Henry 2002; Keel 2004; Memmott et al. 2001). The analysis indicates that the Ministers failed to create a consensus on the *methods or tools* of the Intervention and used this truth to move the focus away from tools and methods and onto the seriousness and horrific nature of child sexual abuse.

As noted above, the analysis identified three interlinked features in the pre-legislative rhetorical argumentation. First was a failure to differentiate and clarify the way in which the federal government sought to use the Report. Second, the speech acts omitted to explain the link between controversial provisions of the Intervention and child sexual abuse. And finally, the Ministers failed to distinguish how this non-consultative Intervention was any different from previous forms of oppressive federal and state intervention into Aboriginal people's lives. These three features will be addressed below.

### **Ministers' use of the *Little Children are Sacred* report**

The Ministers displayed a duality in their communications concerning their use of the *Little Children are Sacred* report. The analysis indicated that the Report was used both as a justification for *taking action* in Aboriginal communities, and as a justification for the *action taken* in terms of the specific methods and tools used in the Intervention. The messages in the speech acts blurred the two uses, weakened the argument, and left open a significant avenue for criticism. Although the Report and the Ministers' intervention arguably shared a number of similarities in their end goals, including ending child sexual abuse, they advocated different approaches to tackling the issue.

In the development of a synthetic necessary truth, the Ministers constructed a reality centring on the use of the metaphor of 'emergency'. The emotive moral capital associated with vulnerable children amplified the need to render help and assistance. The Report was not the first time that political attention had been drawn to suffering in Aboriginal communities. Indeed, as Cripps (2007: 9) suggested, there had been a 'plethora of federal and state government-commissioned reports on the problem' of Indigenous family violence in the decade leading up to the Intervention. However, the immediacy of this emergency, which has been criticised by a number of academics (see, amongst others, Behrendt 2007; Maddison 2008), is apparent throughout the speeches:

What we can only describe as a national emergency in relation to the abuse of children in indigenous [sic] communities. (Howard and Brough: Speech Act H)

This is an emergency situation in the Northern Territory and we need to act quickly. (Brough: Speech Act G)

Well, look, the whole conditions, Kerry, are a national emergency. We've elevated it to that. (Brough: Speech Act D)

One of the authors of the Report suggested, 'no one needed an inquiry to tell them that these measures were needed' (Anderson 2011: 26) and:

Where was the evidence-base for this radical re-shaping of policy ... Simply: it was absent. There was no attempt to justify the policy by reference to evidence. There was no attempt to address that the vast majority of the evidence pointed in exactly the opposite direction to where the policy was going. (Anderson 2011: 27)

The then Prime Minister likened the escalating abuse in Aboriginal communities to the natural disaster that devastated New Orleans in 2005, Hurricane Katrina.

We should have been more humble. We have our Katrina, here and now. That it has unfolded more slowly and absent the hand of God should make us humbler still. (Howard and Brough: Speech Act H)

The US federal response to Hurricane Katrina drew intense criticism, centring on mismanagement and lack of leadership in the relief efforts. The criticism levelled at the federal administration also suggested that race and class were factors affecting the response to the natural disaster (Adams, O'Brien and Nelson 2006). It is therefore surprising that Prime Minister Howard used such a weak metaphor to frame the situation in the Northern Territory. It appears that the Howard government may have intended to use the metaphor of Katrina to allow for a positive comparison between their intended fast response in the Northern Territory and that of the US federal administration. They may also have had the expectation that

allegations of racism would occur regardless of their response. Their emphasis was not on the natural occurrence of the disaster in the Northern Territory but on the necessity of a federal response. It is likely that, rather than the *emergency*, defined as an unforeseen or sudden occurrence, the Prime Minister wanted the idea of *state of emergency* to resonate in the public mind. It is this condition or state of being, as declared by the federal government, that was created by the framing of the situation in the Northern Territory. The existence of this condition allowed for an urgent and unprecedented governmental response, and was used to support the action taken. This newly emerged need for action to combat child sexual abuse was the overarching metaphor and dominant trope found within the speech acts.

The speech acts also indicated a belief that the situation was more serious and severe than it had ever been. The Ministers overstated the findings of the Report, which stated, 'it is not possible to accurately estimate the extent of child sexual abuse in the Northern Territory's Aboriginal communities' (2007: 57). They reported:

That the inquiry finds child abuse occurring in every Indigenous community and that there are sex trades and juvenile prostitution occurring is something that should sicken all Australians. (Brough: Speech Act A)

In reality, as many reports on Aboriginal communities had indicated, the situation gradually developed as the communities in question slowly deteriorated. Indeed contrary to their emergency metaphor, the Ministers acknowledged the issue was not new:

Mal, from the moment he took over this job, identified this as a problem. (Howard: Speech Act I)

The Prime Minister's response to the question 'Why did it take this report to convince you to intervene so dramatically?' (Howard: Speech Act I), nonetheless indicates that the Report convinced the Ministers of the need to take action:

This report was so graphic and the authority brought to it by the two authors was so compelling. (Howard: Speech Act I)

Thus the Report, in Hemming's terms, 'provided the catalyst for federal intervention' (Hemming 2010: 438). However, in other high profile speeches including the media release on the day of the Intervention announcement, the Report was also used to justify the specific methods and actions taken. Initial speeches and public briefings suggested that the Intervention was following the recommendations of the Report:

The immediate nature of the Australian Government's response reflects the very first recommendation of the Little Children are Sacred report. (Brough: Speech Act B)

The speech acts presented the impression that, through taking action, the Ministers were complying with the Report's recommendations. However this was not the case. For example, the Report reiterated the need for 'a collaborative partnership' (Wild and Anderson 2007: 22) between the national and regional governments and Aboriginal communities, and for 'genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities' (Wild and Anderson 2007: 7). It did not recommend the government to impose a top-down solution. In fact, it recommended 'for there to be consultation with, and ownership by the communities, of those solutions. The underlying dysfunctionality where child sexual abuse flourishes needs to be attacked, and the strength returned to Aboriginal people' (Wild and Anderson 2007: 22). This did not occur. There was no consultation with the Aboriginal peoples to be affected, or provision made for their participation in the decision-making and formation of the details of the



Intervention. Significantly, this is at odds with the recommendations of the Report, and Irene Watson (2009) noted the federal government ignored most of the 97 recommendations. Brough's attempt to justify the Intervention by reference to the recommendations of the Report failed to acknowledge that the recommendations advocated an approach that was at the opposite end of the spectrum to that his government sought to take.

The analysis indicates that Ministers' discourse in the speech acts suggests the Intervention was an example of evidence-triggered policy (see Young et al. 2002) and not an example of evidence-based policy-making, as Maddison (2012) has argued. Within the speech acts, the Ministers blurred their use of the Report as a trigger for action and a justification for the action taken, using the opportunity to present the situation as an emergency in order to facilitate the passage of legislation that they argued would tackle the child sexual abuse in remote Aboriginal communities. Unfortunately, the wide-ranging provisions appeared to have few direct links to combating child sexual abuse. On being questioned about this, the speech acts indicate an unwillingness to respond and this, combined with their use of rhetorical tropes, does nothing to disprove or dampen the claims that the Intervention was merely another attempt to morally manage the Aboriginal population.

### **Explanation of linkages between provisions and combating child sexual abuse**

The Report advocated a holistic response to the issues faced in the Northern Territory. It stated 'the underlying dysfunctionality where child sexual abuse flourishes needs to be attacked' (Wild and Anderson 2007: 21). It provided recommendations in relation to health, family support, education, alcohol, community awareness, employment housing, pornography and gambling. As seen above, the legislative provisions impacted and changed these policy areas. However the method of execution of the changes was not in accordance with the recommendations and, to this end, the Ministers' speech acts did nothing to differentiate their approach from that advocated in the Report. Some have thus suggested that 'it is hard to understand how some of these interventions, such as scrapping the permit system, will help reduce child sexual abuse' (Hunter 2008: 381, see also Brown and Brown 2007).

The inclusion of wide-ranging and controversial provisions in the Intervention, coupled with the failure to detail the interlinked nature of those provisions to structural change, was undoubtedly problematic in the creation of a consensus. The speeches implicitly endorsed the complex range of legislation and tools needed to tackle the long-standing issues of abuse. A number of the speeches noted individual measures: for example, alcohol restrictions, medical examination, welfare, and increases in policing levels. Nevertheless, the Ministers failed to explicitly state and explain the reasoning behind the controversial provisions and their links to ameliorating the situation.

When questioned on the methods and details of the Intervention, the Ministers used highly effective rhetorical tropes to close down the line of questioning, avoiding a response and the need to explain the action taken. For example, on being questioned on ABC TV's national flagship current affairs program (Brough: Speech Act D) about the detail behind the mandatory medical check-ups of Aboriginal children, Brough used enantiosis in order to avoid responding:

BROUGH: Well, Kerry, it's very interesting how we are having this discussion because, let's turn it around. Let's do nothing.

INTERVIEWER: Mr Brough, that's not ...

BROUGH: No, Kerry. No, Kerry.

INTERVIEWER: With all due respect, let me make this point to you, there is broad acceptance of a serious need for action to be taken. We are now going to the detail of how you are going to responsibly implement a very radical plan that was

announced at short notice. You are still clearly working out the details. I would suggest to you that these questions are both relevant and responsible and deserve to be answered ...

BROUGH: Well, Kerry, you've got it entirely wrong. What we are doing today is securing the environment and making an assessment. When we have done that, then we will move to the issue of health checks.

Such use of enantiosis by the Minister failed to convey sincerity and indicated a defensive attitude. In light of the traditional owners' longstanding dispossession of Aboriginal land, it is understandable that questions would arise relating to the measures seeking to alter land ownership and occupation. Alterations to the permit system of entry onto Aboriginal land were tabled well before the Intervention, occurring in the *Aboriginal Land Rights (Northern Territory) Amendment Act 2006* (Cth). The explanatory memorandum of this Act openly stated 'the principal objectives of this Bill are to improve access to Aboriginal land for development, especially mining.' Any attempt to question the specific details of the Bills and provisions led to responses that referred to the extent and severity of the devastation within the communities. Reliance upon the synthetic necessary truth of the newly emerged emergency of child sexual abuse and complicity of Aboriginal communities again allowed the argument to divert from critique of the methods and mode of the Intervention, instead focusing on the horrific nature of the abuse.

General statements about societal degradation in Aboriginal communities, although supportive of the need to intervene, failed to ameliorate the lack of explanation of how the highly controversial legislative provisions sought to alter the situation. Instead, they posed a very serious secondary problem, that of stigmatisation of an already marginalised community:

What we have got to do is confront the fact that these communities have broken down. The basic elements of a civilised society don't exist. (Howard: Speech Act J)

Such indictments of entire communities both rely upon and support the synthetic necessary truth. The speech acts presented the extent of the emergency situation as being greater than that outlined within the Report and displayed a lack of sufficient qualifiers or explanation in relation to the extent of the abuse within the remote Aboriginal communities. Any such qualification often came after a damning censure of the Aboriginal community as a whole:

We have been presented with the most compelling evidence of total failure in a society. (Howard: Speech Act I)

This was followed by:

I'm not saying it hasn't happened in other communities and I'm not saying it's only in Indigenous communities that this sort of things happens. I know enough of life to recognise that's not the case. But these are the most egregious examples, the most squalored concentration you can find in our community of these sorts of things. (Howard: Speech Act I)

Issues concerning child sexual abuse are morally axiomatic. The improvement of children's lives and protection of childhood innocence is guaranteed to rally public support. It is therefore possible that the Ministers sought to rely upon the pre-existing beliefs of the audience, including any racist beliefs about the conduct and behaviour of Aboriginal people, in order to gain support for the federal government Intervention. Ministers sought to garner support using an overemphasis on the failure of the collective community in relation to the child abuse:

This social malaise cannot and should not be seen as just a failure of government. The primary responsibility for the care and upbringing of children must rest with parents and we should be honest and mature enough as a society to recognise this fact. (Howard: Speech Act K: 70)

The speech acts intimated that the community could have tackled the problem but was unable to act without help. Implied within the speech acts was the suggestion that the Ministers were willing to take the brave steps to remedy the situation, where others had ignored the situation or faltered. There was no apology for any failure by the incumbent or other federal and territory governments, for inaction in the face of the growing number of reports of child sexual abuse. It was implicit within the speech acts that failure of the collective community to respond allowed for the Ministers to override any recommendations of the Report in relation to consultation, empowerment and culturally appropriate responses.

It may be that the Ministers thought that statements surrounding the horrific nature and extent of the abuse would provide them with the support to impose significant and wide-ranging provisions and thus allow them to avoid explaining the details of the hastily-drafted and complex legislative bills. Even so, it was easily foreseeable that taking action at odds with the recommendations of the Report would lead to claims of racism and paternalism. This likelihood was amplified by the practically unexplained suspension of the *Racial Discrimination Act 1975* (Cth). The scant explanation of the linkages between the measures of the Intervention and intended outcomes was a shortcoming in the speech acts. In particular, there was need to explain why the Report was not being followed. However this omission served the Ministers' purposes and facilitated the passage of the Acts. The most glaring absence is in relation to the issue of agency and Aboriginal peoples, especially the failure to follow the first recommendation of the Report which included that both federal and territory governments 'commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities' (Wild and Anderson 2007: 22). This issue will be addressed below.

### **Ministers absence of recognition of agency and need for consultation**

One of the enduring legacies of the top-down approach taken by numerous federal and territory governments has been the removal of agency and ability of Aboriginal peoples to shape their futures. Contrary to the recommendations of the Report, which recognised the importance of Aboriginal participation, Howard and Brough found it expedient to act on behalf of, rather than in partnership with, Aboriginal communities. As seen above, these communities were portrayed within the speech acts as being complicit in the abuse. The Prime Minister used hypophora, a figure of speech where the speaker poses and answers a question, in the initial press conference announcing the Intervention, to imply complicity:

What would happen if the same circumstances occurred in an outer metropolitan suburb? It would have been horror and immediate action and a demand by the community that something be done. That has not happened in relation to the Northern Territory. (Howard and Brough: Speech Act H)

These tropes indict both the community and Northern Territory Government for its inaction:

The report was in the hands of the Northern Territory Government for some eight weeks before it was released and subsequently the Chief Minister has indicated that they would have a response in a period of six weeks. (Howard and Brough: Speech Act H)

The framing of the situation as an extensive national emergency in which the communities were complicit allowed the Ministers to implicitly dismiss participation of the Aboriginal

communities and Northern Territory Government in the decision-making process. This is particularly problematic in relation to the historical injustices against Aboriginal peoples. It is contrary to the recommendations in the Report that recognised the importance of empowering Aboriginal communities to work with the State in crafting solutions to problems within them. Although presenting as if following the recommendations, Brough dismissed the need for further consultation:

We need strong powers so that we are not weighed down by unnecessary red tape and talk fests, and can focus on doing what needs to be done. (Brough: Speech Act G: 18)

The audience faces a binary proposition: action or inaction. The suggestion is that the consultation and cooperation with the community in a 'talk fest' would result in inaction and delay any response. Inaction was presented as a corollary to consultation and, along with it, more lives ruined. Contextualised, this communicated and reinforced to the audience that both ignoring the wishes of the local community and the failure to consult was for the benefit of the children. It is, therefore, easy to understand how some academics including Brown and Brown (2007: 622) have argued that the public debate has been put in the terms 'you are either with us or against us'.

Brough's narrative within the speech acts relied heavily on the urgency of ending child sexual abuse. Lack of action or any delay in acting, including by implication normal legislative procedure and consultation, was presented as further tacitly sanctioning the abuse. Pritchard (2007) noted that the federal government introduced the Bills in the House of Representatives less than 24 hours after first providing drafts of the proposed legislation to the opposition parties and relevant stakeholders, including peak Indigenous bodies. The legislation 'totalling over 500 pages, were rammed through parliament in a week with scrutiny by the Senate Committee that was convened for just one day (and which received 154 submissions in the available 48 hours)' (Altman 2007: 8). Regardless of the horrific nature of the abuse, the time or lack thereof, for external input was concerning in light of the longstanding mistreatment of Aboriginal people in decision-making.<sup>8</sup> There was, thus, a failure to distinguish how this situation leading to the Intervention was different to cases of child abuse reported elsewhere and previous paternalistic state behaviour towards Aboriginal Australians in remote communities.<sup>9</sup>

The speech acts also demonstrated a resolute attitude that could understandably be interpreted by some as neo-colonial and imperious. In a doorstep interview, the Prime Minister responded to the calls for greater consultation:

My reply to that is that my Government has never stopped talking to Indigenous people, but what has to be understood now is that the old approach has not worked and if we are to save a generation of Indigenous children from the most appalling abuse we must intervene in the way that I have outlined and we will maintain our position very strongly. (Howard: Speech Act M)

The response from the Prime Minister was not that the government would listen. It was that the old approach, listening to Aboriginal people and their needs, did not work. Analysis of the speech acts indicated a failure to distinguish why the Intervention should occur in the form of a non-consultative imposition. It also shows that the speech acts were void of any acknowledgment or understanding of nature and treatment of 'race, state intervention and spatial governance' (Howard-Wagner 2010a: 219). It is concerning that the federal government did not engage in consultative dialogue and partnership with Aboriginal peoples but instead presented itself as a heroic saviour:

I have likened this to the action we should take when a community is struck by a cyclone or a flood. Certain things have to be put aside. Certain normalities have to be discarded. You have to move boldly and you have to do it quickly. (Brough: Speech Act C: 76)

The state of emergency was used to implicitly justify overriding the recommendations of the Report that spoke directly to the need for consultation and empowerment of the local communities. The attempts to distinguish how the Intervention differed from previous federal responses to Aboriginal communities and diversionary responses were unconvincing and did nothing to positively strengthen the argument for the Intervention.

### **Concluding comments**

While the Ministers may not have been concerned about the quality of their argumentation and chose to focus only on the outcome, the real success within the pre-legislative discourse was the creation and use of a synthetic necessary truth. Fundamentally, the outcome was another instance of a top-down policy imposition onto Aboriginal communities that faced little resistance. Along with a number of rhetorical tropes, a synthetic necessary truth was successfully used to deny any opponents to the Intervention a sustainable rebuttal. In fact, it helped to secure the overwhelming support of the opposition Australian Labor Party, something notoriously difficult for the conservative Howard-led Liberal-National Party Coalition Government to do.

Australia's neglect of its remote Aboriginal communities has led to longstanding degradation in some communities to the point where child sexual abuse became commonplace in some alcohol and drug-filled communities. However, the speech acts communicated a different message. They highlighted an extensive unfolding national emergency within all remote Aboriginal communities. It communicated that these communities imperilled childhood innocence and facilitated sexual abuse of Aboriginal children, and that the parents, localised communities, and Northern Territory Government bore responsibility for these endemic failures. The Ministers thus created a situation where their response appeared to be the only plausible approach.

The Report was a catalyst for action but the Ministers failed to differentiate and justify their approach to the Intervention, which did not align with the Report's recommendations. It appears that the Ministers never intended to use the Report as a blueprint for the Intervention. However, their framing of the Intervention as a response to the findings of the Report, and as a justification for the specific methods, meant that this Report became the parameters of review and thus a basis for criticism from academics, commentators and the general public.

The speech acts contained a lack of explanation and detail of the methods and tools of the Intervention. The clarification of the links between the extensive and controversial provisions and the improvement of the community, and thus links to child sexual abuse, were sparse. Ministers referred to the extent and pervasive nature of the abuse in the hope that the recipient would believe that a complex set of measures was required to tackle the problem.

With the existence of consensus on the need to act, the Ministers' foci should have been on developing consensus on the methods of the Intervention. Instead, they focused on communicating the emergency nature of the situation. The research indicates that, while it appears that the use of the rhetorical trope and creation of a synthetic necessary truth was factually unnecessary, the use of the trope was functional in that it diverted attention away from the detail of the Intervention and onto the horrific nature of the abuse. This allowed for the presentation of the binary positions of pro- or anti-change, which was deliberately used to silence any opposition. This in turn supported the federal government's requirement for the Northern Territory Government and communities of Aboriginal peoples to fall into line with the



conditions to be imposed on them. The result is a response that was similar to previous eras of heavy-handed and damaging top-down imposition. The speech acts indicate a far more thoughtful and strategic approach to argument formation than has been credited.

The focus on argumentation allowed the analysis to pay attention to the structure and quality of the arguments used by Ministers as they justified and communicated their support of the Intervention. The findings of the analysis can be used by Ministers and policy makers in order to strengthen argumentation, and by opponents to challenge and counter strong rhetorical narratives that were so effective in facilitating policy change. Although the rhetorical tactics succeeded in denying the opposition a socially sustainable rebuttal, the rhetorical tropes and synthetic necessary truth both muddled and muffled the messages the actors sought to communicate rather than forging a true consensus. Ultimately however, the result of the discourse was highly successful: it secured the Ministers the virtually unhindered enactment of contentious legislation, enabling their Intervention.

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<sup>1</sup> The terms Aboriginal and Indigenous are used here to specially refer to Aboriginal and Indigenous peoples residing in Australia. The capitalisation of these words is consistent with the Australian Commonwealth usage of the terms and indicates respect to those referenced; see, generally, NSW Department of Health (2004).

<sup>2</sup> The package of legislative measures includes the *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Emergency Response and Other Measures) Act 2007* (Cth); *Appropriation (Northern Territory National Emergency Response) Act (No 1) 2007-08* (Cth); *Appropriation (Northern Territory National Emergency Response) Act (No 2) 2007-08* (Cth).

<sup>3</sup> The term 'speech act' is used here to refer to a communication or utterance, which in this context is considered as an action paying particular attention to its intention, purpose or effect.

<sup>4</sup> Whilst public interviews are not listed in s15AB(2) of the *Acts Interpretation Act 1901* (Cth) as extrinsic aids which may assist with legislative interpretation of an Act, parliamentary debates on the bill (Hansard), and in particular the Second Reading Speeches of both the House of Representative and the Senate are listed.

<sup>5</sup> Litotes is a figure of speech using an understatement to emphasise a point. For example, stating a negative to affirm a positive or the use of double negatives.

<sup>6</sup> Metonymy is a figure of speech in which a word or phrase is substituted for another with which it is closely associated.

<sup>7</sup> Similar to metonymy, synecdoche is a rhetorical trope in which a term denoting the whole is used for the part or part for the whole; for example, ten pairs of hands to refer to ten people.

<sup>8</sup> For further detail on Aboriginal decision-making see, Anderson 2007; Sanders 2002. On the dissolution of the Aboriginal and Torres Strait Islander Commission, see Pratt and Bennett 2004.

<sup>9</sup> There is no shortage of examples of legislation that severely impacted Aboriginal Australians' lives in a number of ways; for example, in South Australia, Aboriginal people were prevented by ss 17 and 31 of the *Aborigines Act 1934-39* (SA) from freely moving around the state. They could be sent to reserves or institutions or expelled from them by the Aborigines Protection Board. Aboriginal Australians were unable to own property under the *Welfare Ordinance 1953-60* (NT) ss 25-29. The *Aborigines Preservation and Protection Act 1939-1946* (Qld) prevented Aboriginal people in Queensland from handling their own money including that gained from employment. They were also unable to freely marry under the same Act (s 19) and could not have sexual relations with non-Aboriginal people (s 29).

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